

In the Matter of the Trial of War Criminals under the Royal Warrant  
Dated 14 June and 4 August 1945  
And in the Matter of the War Criminals Trial of Joseph Kramer and others  
Held at Luneburg, Germany from 17 September to 17 November 1945

The Petition of Franz Stärfl - No.25 on the Charge Sheet

Franz Stärfl (hereinafter called "the Petitioner") submits a Petition to the Confirming Officer against the finding and Sentence pronounced upon him in Open Court at Luneburg on 16 and 17 November 1945 on the following grounds :-

1. That the Petitioner is not guilty of the charge against him.
2. That the particulars in the First Charge in the Charge Sheet do not disclose a War Crime.

The Petitioner submits that the alleged ill-treatment by the members of the staff of Bergen-Belsen Concentration Camp was not a "War Crime" within the definition given in the Regulations attached to the Royal Warrants dated 14 June and 4 August 1945; i.e. that there was no evidence of a violation of the laws and usages of war committed during any war in which His Majesty has been or may be engaged at any time since 2nd September 1939. The only purpose of making a war crime punishable in the individual is that it is a means of securing legitimate warfare; that without this terror hanging over individuals it would not be certain that mere international action on international level would secure legitimate warfare.

The policy of concentration camps was started by Hitler within a few weeks of his ascension to power in early 1933. It was continued with ever increasing intensity throughout the whole time of peace and it would have been continued after the war if the Germans had won. It was part of a national German policy aimed at the degradation and ultimate extermination of the Jewish and other races whom the Germans regarded as their inferiors. The events alleged against the members of the staff of Bergen-Belsen Concentration Camp, although occurring during a war in which His Majesty was engaged since 2nd September 1939 had no logical connection with that war whatsoever. Those events were the direct consequence of a policy which was begun in peace as a peace-time policy and was intended to be carried on as a permanent and long-term policy until its purpose was achieved - they had nothing to do with the operations of war whatsoever.

From the Allied Nations point of view it assists in no way the security of their forces or the operations of their armies to punish someone who has been guilty of misbehaviour in a German Concentration Camp.

3. That the learned Judge Advocate General omitted to direct the Court as to law on the following points :-

As to the law affecting the application by the Defending Officers to sever the two charges in the Charge Sheet and to have them tried separately. (Transcript 1 page 8)

The Judge Advocate General in his summing up on that application said to the Court (Transcript 1 page 14) "You have had the law, such as it is, put very fairly and properly before

you ---- That is entirely a matter for you. You have had your attention directed to all the relevant matters".

The law affecting that application was in issue and as a result of the Judge Advocate General omitting to advise the Court as to what was the proper law, the Petitioner humbly submits that the application was wrongly refused. Consequent upon the two charges not being severed and tried separately, evidence of a nature prejudicial to the Petitioner was wrongfully admitted.

The Petitioner was included in the first charge only and submits that evidence given on the second charge naturally tended to his prejudice.

In replying to the application by the Defence, the learned Prosecutor said (Transcript 1 page 12) "Dealing with the question of whether the two charges should be taken together or separately, my friend suggests that they do not come within R.P.16. I am afraid I entirely disagree. We disagree, of course, not on the law but on the facts. ---- The allegation of the prosecution is that these two cases are a continuation of a series insofar as those persons who were at Auschwitz are concerned."

There was no evidence before the Court that the Petitioner was ever at Auschwitz (he was not included in the second charge - "the Auschwitz charge") and it is humbly submitted that the Petitioner could not properly be said to have been concerned in a series of activities which took place at Auschwitz and were continued at Belsen.

The Petitioner does not deny that evidence of his activities elsewhere than at Belsen would have been properly admissible in evidence to prove a systematic course of conduct in order to disprove a defence of accident - but it is submitted that as the Petitioner was not at Auschwitz, evidence of activities in the Concentration Camp there should not have been admitted before the Court on the charge alleging ill-treatment of Allied Nationals at Bergen-Belsen Concentration Camp.

4. That the weight of the evidence was against the finding of "guilty" given against the Petitioner and the sentence passed upon him.

The evidence against the Petitioner was contained in the affidavit of Bohumil Grohmann (No.27a Exhibit 31); the affidavit of Ernest Poppner (No.257 Exhibit 107); the affidavit of Adam Mocks (No.259 Exhibit 108) and the statement of Adolf Linz (No.93a Exhibit 55)

The Petitioner is alleged to have been in command of a convoy of internees from a concentration camp at Klein Bodungen near Nordhausen which marched to Bergen and finally was accommodated in the Wehrmacht Barracks there. On the march it is alleged that certain internees could not keep up with the convoy and these were shot by the accused Wilhelm Dorr (No.27 in the Charge Sheet) who was second-in-command of the convoy. There are no allegations of shooting against the Petitioner but it is alleged that he knew what was happening and did nothing to stop these occurrences.

The Petitioner denies that these shootings on the march did take place and humbly submits that the Prosecution should have produced further local evidence to substantiate that these allegations are true - particularly as Grohmann says he could go back along the route - (all the places through which the convoy passed are within the British Zone) and show where the bodies were buried.

In the Petitioner's humble submission the obvious inference is that the Prosecution have attempted to do this, but no confirmation of the allegations is forthcoming, because they are untrue.

On the other hand, confirmation was put before the Court that certain internees were shot outside the village of Grosshehlen, near Celle, as alleged by the Petitioner. These internees were shot by a Waffen S.S. unit stationed in the village after the convoy had been taken out of the Petitioner's control and command by an officer of that unit. The Petitioner respectfully refers to his evidence in Court (Transcript 32 pages 2 - 7) and the evidence of Heinrich Brammer, Burgomaster of Grosshehlen (Transcript 45 pages 3-7)

The affidavits describing this march should, in the Petitioner's humble submission be received with great reserve and he respectfully refers to the remarks of the learned Judge Advocate General regarding affidavits adduced in evidence (Transcript 51 page 4, last two paragraphs). These affidavits do not corroborate each other as regards a single allegation of which details are given.

On the other hand, the evidence of the Petitioner is corroborated by independent live witnesses.

The Petitioner humbly submits that it is most suspicious that no mention of any shooting of ~~any~~ internees at Grosshehlen is contained in the affidavits of the Prosecution's witnesses - the only occasion as regards which independent corroborative oral evidence was produced before the Court. In the Petitioner's humble submission it is apparent that internees were shot at Grosshehlen but because they knew that the Petitioner could in no way be held responsible, the Prosecution's witnesses fabricated shooting incidents at other places on the march, alleging that the Petitioner was responsible.

To convict an accused solely on affidavit evidence - which discloses substantial discrepancies - (the Petitioner respectfully refers to the points made in his defence at Transcript 47 page 40) in the Petitioner's humble submission, lays the Court open to the risk of committing the very gravest judicial error, and is a finding which should not reasonably be allowed to stand.

On the foregoing grounds and on account of any other matters pertaining thereto, the Petitioner humbly submits that he is not guilty of the charge in respect of which he has been found guilty and in respect of which he has been sentenced to death by hanging and humbly prays the Confirming Officer that the finding be quashed and the sentence remitted.

For and on behalf of the above-named  
Petitioner Franz Stärfl

*R. A. Fielden*  
Capt. R. A.  
Defending Officer Appointed  
27 November 45.